

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL SCAVO, individually and)
on behalf of all others similarly situated,)

Plaintiff,)

vs.)

ACCOUNT DISCOVERY SYSTEMS,)
LLC, and DOES 1 through 10, inclusive,)
and each of them,)

Defendant)

Case No. 2:17-cv-03899-GEKP

**DEFENDANT ACCOUNT DISCOVERY SYSTEMS, LLC’S
MOTION TO STRIKE PURSUANT TO
FED. R. CIV. P. 12(f), FED. R. CIV. P. 23(c)(1)(A) and FED. R. CIV. P. 23(d)(1)(D)**

Defendant Account Discovery Systems, LLC (“ADS”) by and through its attorneys Lippes Mathias Wexler Friedman LLP, hereby moves this Honorable Court for an Order granting ADS’s Motion, pursuant to Fed. R. Civ. P. 12(f), Fed. R. Civ. P. 23(c)(1)(A) and Fed. R. Civ. P. 23(d)(1)(D), striking Plaintiff’s class allegations.

As set forth in detail in the Brief supporting its Motion, the Complaint’s proposed class definition based on alleged violations of the Telephone Consumer Protection Act, 47. U.S.C. § 227 et seq. (“TCPA”) is limited to those individuals that revoked prior express consent to be contacted on their cellular phones via an automatic dialing system. Accordingly, the proposed class definition determines membership based on a finding of liability, and thus, must be struck as fail-safe.

Accordingly, ADS seeks an Order granting its Motion to Strike Plaintiff’s class allegations pursuant to Rules 12(f), 23(c)(1)(A) and 23(d)(1)(D).

Dated: October 6, 2017

LIPPES MATHIAS WEXLER FRIEDMAN LLP

/s/ Brendan H. Little

Brendan H. Little, Esq.
Attorneys for Defendant
50 Fountain Plaza, Suite 1700
Buffalo, NY 14202
P: 716-853-5100
F: 716-853-5199
blittle@lippes.com

CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2017, I electronically filed the foregoing Motion via the CM/ECF system, which should then send notification of such filing to all counsel of record.

/s/ Brendan H. Little

Brendan H. Little, Esq.